CLAIRES INEZ WOOD SWANNER

IBLA 80-109 Decided September 24, 1981

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications N-25481 and N-25544.

Affirmed.

1. Act of February 8, 1887--Indian Allotments on Public Domain: Lands Subject to

> Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

APPEARANCES: Claires Inez Wood Swanner, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Claires Inez Wood Swanner appeals from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated October 17, 1979, rejecting her Indian allotment applications N-25481 and N-25544 filed

for public lands in Clark County, Nevada, pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1976). 1/

On July 25, 1979, appellant filed an application (N-25481) on behalf of her son, Curtis Ray Swanner, for 160 acres of land located in the NW 1/4 sec. 27, T. 19 S., R. 59 E., Mount Diablo meridian, under the General Allotment Act, supra.

On August 1, 1979, appellant filed her own application (N-25544) for 160 acres of land located in the SW 1/4 sec. 27, T. 19 S., R. 59 E., Mount Diablo meridian, under the same Act. In the two applications appellant states that neither she nor the child occupies the land or has placed any improvements on it. However, she states that both claim a bona fide settlement.

BLM's decisions rejected appellant's applications because it found the lands requested therein to be within an area that has been classified for retention in Federal ownership. BLM explained that the classification segregates the land from appropriation under the agricultural land laws.

In her statement of reasons appellant contends:

> The Agricultural Land Laws Can Not Supersede the Allotment Claims of Indians.
>
> SEE
>
> Title 25 U.S.C.-334
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> SEE 43 C.F.R. 2212 Part 3
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> SEE
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> Choats V. Trapp 224 U.S. 413 (1912) [2/]
>
> SEE
>
> U.S.C.A. Const. Amend. 5

1/ This section provides in pertinent part:

"Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in * * * [other sections of the Act]."

2/ We note that the Indian allotment case at 224 U.S. 413 is Heckman v. United States.

The file contains a copy of a "Notice of Classification of Public Lands for Multiple Use Management" dated June 27, 1967, which, in pertinent part, reads as follows:

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR, Subparts 2410 and 2411, the public lands described in paragraph 3 below are hereby classified for multiple use management.

2. Publication of this notice segregates (a) the public lands described in paragraph 3 from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C., sec. 334), and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the Public Land Sale Act of September 19, 1964 (43 U.S.C. 1421-27), and (b) further segregates the public land described in paragraph 4 of this notice from operation of the general mining laws (30 U.S.C. 20). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing or material sale laws. As used herein, "public lands' means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district, established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

3. The classified public lands are located within the Spring Mountain Planning Unit and are shown on maps, designated as N-257, which are on file in the Las Vegas District Office, Bureau of Land Management, 1859 North Decatur Boulevard, Las Vegas, Nev., and the Land Office, Bureau of Land Management, Federal Building, 300 Booth Street, Reno, Nev. The lands involved are described as follows:

Mount Diablo Meridian, Nevada

* * * * * * *

T. 19 S., R. 59 E.,

Secs. 16, 17, 19 to 22 inclusive;

Secs. 27 to 35, inclusive. [Emphasis supplied.]

This notice of classification specifically covers the lands sought by appellant in both applications and thus "otherwise appropriates" the lands sought by the appellant herein.

Section 4 of the Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Pamela June Wood Finch, 49 IBLA 325 (1980); Thurman Banks, 22 IBLA 205 (1975). In the present case, the lands were "appropriated" when they were segregated under the order published in the Federal Register on July 7, 1967 (32 FR 9995-96). Furthermore, there is no evidence that either appellant or her child has made "settlement" as required by the Act. Her applications show that neither occupies the land nor has placed improvements on it.

Appellant's applications were filed on July 25 and August 1, 1979, years after the segregation of the land in issue. An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act at the time the application is filed. Pamela June Wood Finch, supra; Thurman Banks, supra.

The authority cited by appellant is not in point because the instant case involves land which was segregated from entry under the laws at the time appellant's applications were filed. The regulation cited, 43 CFR 2212 (1978), deals with miscellaneous state exchanges.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge.